

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No. 33 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA****HONOURABLE MS.JUSTICE H.N.DEVANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

R NITIN & COMPANY - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 01/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS. H. N. DEVANI)

**1.The Income Tax Appellate Tribunal,
Ahmedabad Bench "A", has referred the**

following question under Section 256 (1) of the Income Tax Act, 1961 (the Act), at the instance of the Commissioner of Income Tax.

“Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to exclude the commission of Rs.8,01,845/- paid to various dealers for sale of engines from the purview of section 37 (3-A-3D) ?”

2.The assessment year is 1985-86 and the relevant accounting period is S.Y. 2040.

3.Heard Mr. M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue. Though served, there is no appearance on behalf of the respondent-assessee.

4.Mr.M.R.Bhatt has very fairly pointed out that the controversy in issue stands concluded by a decision of this Court rendered in the case of Commissioner of Income Tax vs. Zippers India, I.T.R No.141 of 1994, decided on 5/10/2005 in favour of the assessee.

5.Therefore, applying the ratio of the aforesaid decision in the case of

Commissioner of Income Tax vs. Zippers India (Supra), it is held that the Income Tax Tribunal was justified in law and on facts in directing the Assessing Officer to exclude commission of Rs.8,01,845/- paid to various dealers for sale of engines from the purview of Section 37 (3A-3D) of the Act.

6.The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.MEHTA, J.) (H.N.DEVANI,J.)

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